UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Southern Company Services, Inc. Docket Nos. EL05-53-000 and ER05-129-000

ORDER CONCLUDING INVESTIGATION

(Issued July 28, 2005)

1. In this order, the Commission concludes an investigation into the status of operation and maintenance (O&M) expenses being charged by Southern Company Services, Inc.[1] to generators under 18 interconnection agreements (Interconnection Agreements).[2] The Commission finds that Southern's O&M rates are properly on file and that Southern is authorized to charge these rates.

I. Background

2. On November 1, 2004, Southern submitted an "Informational Filing Regarding Recovery of O&M Charges under Interconnection Agreements" (Informational Filing) informing the Commission that Southern intended, as of January 1, 2005, to begin charging the customers expenses associated with operating and maintaining the interconnection facilities necessary to allow Southern's interconnection customers to deliver power onto Southern's network.[3]

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[1] Southern Company Services, Inc. acts as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern).

[2] *Southern Company Services, Inc.*, 110 FERC ¶ 61,362 (2005) (Investigation Order).

[3] "Interconnection Facilities" are generally defined by the Commission to mean "all facilities and equipment between the Generating Facility and the point of interconnection, including any modifications, additions or upgrades that are necessary to physically and electrically interconnect the generating facility to the Transmission Provider's transmission system." *See, e.g.*, *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171

3. The Commission issued a notice inviting comments.[4] However, four days later the Commission issued a "Notice Rescinding Prior Notice." Despite rescinding the notice, the Commission received motions to intervene and protests from Tenaska Georgia Partners, L.P., Tenaska Alabama Partners, L.P., and Tenaska Alabama II Partners, L.P. (collectively Tenaska), Effingham County Power, LLC (Effingham), and Calpine Corporation (Calpine). Southern then filed various responses and motions.

4. In the Investigation Order, the Commission concluded that it did not know what charges, if any, Southern may be billing, let alone whether they are just and reasonable. For that reason and to provide an opportunity for public comment, we ordered an investigation pursuant to sections 206 and 307 of the Federal Power Act (FPA).[5] The purpose of the investigation was to provide Southern with an opportunity to explain to the Commission in a paper hearing: (1) whether it was currently assessing these O&M charges to its customers; (2) whether its O&M charges for these Interconnection Agreements were properly on file with the Commission; (3) whether the rates (if they are on file) were just and reasonable; and (4) what would be the appropriate remedy if Southern was collecting O&M charges contrary to the FPA. We directed Southern to make a responsive filing by April 15, 2005. We also invited any party (including those who filed comments in Docket No. ER05-129-000) to submit comments in Docket No. EL05-53-000.

II. Notice and Interventions

5. The Investigation Order's initiation of this proceeding was noticed in the *Federal Register*, 70 Fed. Reg. 17,988 (2005). Southern filed its Response to the Investigation Order on April 15, 2005. On that same day, Effingham filed a motion to intervene and comments. Effingham also filed comments in response to Southern's April 15 filing on May 2, 2005. Tenaska filed a motion for leave to intervene out-of-time and comments on April 19, 2005. Calpine filed a motion for leave to intervene out-of-time on April 26, 2005, but did not make any substantive arguments. On May 2, 2005, Southern filed an answer to Effingham's initial comments. On May 10, 2005, Southern filed a motion opposing Calpine's motion to intervene out-of-time and an answer to Effingham's May 2 comments.

(2005), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,146 (2005). In this docket we are not considering whether the facilities at issue are properly classified as Interconnection Facilities or as Network Upgrades. However, that issue is the subject of complaints filed in Docket Nos. EL05-25-000, EL05-26-000, and EL05-27-000.

[4] Southern's Informational Filing was initially assigned Docket No. ER05-129-000.

[5] 16 U.S.C. §§ 824d and 824e (2000).

A. Southern's Initial Response to the Investigation Order

6. On April 15, 2005, Southern filed its response to the Investigation Order, resubmitting and incorporating by reference its Informational Filing. Southern states that it has been submitting invoices to the various generators for O&M charges since January 1, 2005.

7. Southern argues that the Interconnection Agreements authorize it to collect O&M expenses from the various interconnected generators without making a further filing with the Commission.[6] Southern states that the Interconnection Agreements authorize recovery of the O&M costs and allow Southern to implement a methodology for calculating the charges. Southern states that the methodology is consistent with the methodology used by other public utilities.

8. Southern states that it's Informational Filing supplied cost support in order to implement the O&M expense provisions in the Interconnection Agreements on file with the Commission. It says that the O&M provisions in the Interconnection Agreements discuss in detail the obligation of the interconnected generators to reimburse Southern for O&M expenses and also describe the notification and billing process. Southern states that the affected generators were on notice of their obligation to reimburse Southern and received further notice from letters sent by Southern on October 27, 2004. The only

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[6] The IA provisions governing the collection of O&M costs, while all slightly different, substantively resemble this provision from the Georgia Power-Tenaska IA:

> 5.4 Payment of Cost of On-Going Maintenance and Operation of the Interconnection Facilities:
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> 5.4.1 Georgia Power shall develop and provide to Tenaska an estimate of all costs and expenses to be paid by Tenaska for the operation and maintenance of the Interconnection Facilities on an annual basis. Tenaska shall pay one-twelfth (1/12) of such estimated costs in accordance with Section 10. In addition, Tenaska shall pay all costs incurred by Georgia Power to repair and restore the Interconnection Facilities caused by any Force Majeure Event.
>
> 5.4.2 Georgia Power shall true-up this estimate to Georgia Power's actual costs and expenses within a reasonable period of time after such actual costs and expenses are known, but not less often than annually. In the event that the actual costs and expenses to be paid by Tenaska under this section 5.4 are more or less than Georgia Power's initial estimate, the difference (either a credit or additional charge) shall be reflected on a subsequent invoice.

matter that Southern claims should be at issue is whether the intent of the parties to permit recovery of O&M expenses is clearly expressed in the Interconnection Agreements. If the answer is "yes," then Southern claims that any concerns that the Commission has about the justness and reasonableness of the Interconnection Agreements should have been addressed when the Commission accepted the agreements.

9. Southern argues that the Commission's Investigation Order is inconsistent with the FPA. It states that the Commission has the burden of proving through substantial record evidence that Southern's recovery of the O&M charges under the Interconnection Agreements is not in accordance with the FPA. Absent such a showing, Southern says it must be allowed to continue to recover the O&M charges. Southern states that the rates and charges questioned by the Investigation Order are properly on file with the Commission and are currently in effect.

10. Southern argues that the Investigation Order attempts to shift the Commission's statutory burden to Southern by directing Southern to demonstrate that the O&M charges are properly on file and are just and reasonable. Southern argues that this reverses the statutory standard. Southern argues that the Commission cannot meet its burden of proof under section 206 because the filed rates (the Interconnection Agreements) have been accepted for filing under section 205 and are just and reasonable and the charges authorized by those filed rates (the O&M methodology) are also on file with the Commission and are just and reasonable.

11. Southern argues that the Commission appears to be pre-judging the outcome of the proceeding. The mere act of initiating the 206 proceeding to investigate agreements and charges that the Commission previously accepted suggests a pre-disposition on the part of the Commission to reject Southern's actions with respect to the O&M charges. The Investigation Order's request that interested parties address the issue of the appropriate remedy if Southern is collecting O&M charges contrary to the FPA implies that the Commission has pre-determined that Southern's recovery of the O&M expenses is unlawful.

12. Southern states that section 206 allows the Commission to order relief only prospectively if it is able to meet the burden of proof. Thus, Southern argues, it is inappropriate for the Investigation Order to imply that the Commission could impose "punitive" remedies retroactively.

13. Southern argues that the Interconnection Agreements satisfied the specificity requirements of the Commission's regulations. Southern states that the D.C. Circuit held in *Southern Company Services, Inc. v. FERC*, 353 F.3d 29, 34-35 (D.C. Cir. 2003) (*Southern*), that regulated entities that satisfy the Commission's specificity requirements

are entitled to recover appropriate costs incurred in contract performance. Recovery is authorized because an entire section of each agreement discusses the obligation of the interconnected generator to reimburse Southern for O&M.

14. Southern states that its Informational Filing informed the Commission and the generators of the methodology used to determine the O&M charges but that the Investigation Order seems to imply that the filing should have been submitted under section 205. According to Southern, such treatment would be inconsistent with the treatment of the interconnection agreements as filed rates. Southern states that its Informational Filing was neither an initial filing of a rate schedule nor a change to a rate schedule, but merely implemented the filed rate. Southern argues that even if the Commission were to determine that the Informational Filing should have been submitted as a rate change filing, Southern satisfied the statutory and Commission-imposed requirements for such filings.[7]

15. Southern argues that the process it followed here was the same as the one it used in its earlier attempt to recover line outage costs from interconnecting generators.[8] Southern states that in that case the Commission "did not question Southern Companies' submission of the materials as an informational filing." Southern goes on to argue "that there was **no** suggestion that the filing should have been submitted pursuant to section 205 of the FPA."[9]

16. Southern states that the Commission should not have relied on Southern's characterization of the Informational Filing as an "Informational Filing" and should have considered it as a section 205 filing. Southern states that the Commission frequently ignores the titles of filings and treats them as something other than what they are titled.[10]

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[7] Southern quotes from the transmittal letter of its Informational Filing, stating that if the Commission should decide the Informational Filing was a change in rate schedule for purposes of 18 C.F.R. § 35.13, the Filing would fall under the abbreviated filing requirements. Southern then refers to exhibits demonstrating that the Informational Filing was a small rate increase of less than $200,000 (per interconnection agreement) and states that the filing requirements for abbreviated filings are irrelevant here because the Regulations contemplate the filing of rates for bundled power sales.

[8] *Citing Southern Company Services, Inc.*, 99 FERC ¶ 61,031, *order on reh'g*, 101 FERC ¶ 61,035 (2002), *aff'd, Southern Company Services, Inc. v. FERC*, 353 F.3d 29, 34-35 (D.C. Cir. 2003).

[9] Southern's answer at 6 (emphasis in original).

[10] *See* Southern's April 15 Response at p. 20-21 (citing *Long Island Lighting Co.*, 82 FERC ¶ 61,124 (1998) (determining that a settlement filed among various parties was actually a rate filing, and initiating a hearing pursuant to both sections 205 and 206); and

Southern argues that the Commission's filing regulations suggest that the Interconnection Agreements and the Informational Filing, taken together are the filed rate and that each of the affected Interconnection Agreements along with the Informational Filing is a complete rate schedule that satisfies the requirements of section 35.1 and is thus properly on file with the Commission. Southern argues that if the Commission treats the Informational Filing as a rate change, then it became effective as a filed rate on January 1, 2005. Thus, the O&M charges are properly on file and Southern has the right to recover the costs. Southern further argues that any public notice requirements established by the Commission or the FPA were satisfied by the Interconnection Agreements, the Informational Filing, and the correspondence sent to the interconnected generators. Southern states that its Informational Filing demonstrated that the O&M charges are just and reasonable and incorporates its Informational Filing by reference.

17. Southern states that none of the protests filed in Docket No. ER05-129-000 raised concerns as to the reasonableness of the methodology used to derive the O&M charges. Intervenors only raised specific questions with regard to one component of the methodology -- whether the control center cost component doubly recovered costs already recovered in the generators' payment of monthly administrative fees. Southern argues that such concerns about double recovery are unfounded, because the revenues recovered by Southern through the monthly administration charges are applied as a credit to the account associated with Power Coordination Center costs, offsetting the costs captured in that account.

18. Additionally, Southern states that the methodology used to derive the O&M charges was based in large part on a Commission-approved methodology used by American Electric Power (AEP) for several years.[11] Southern argues that it's O&M approach captures the same general cost components that are in AEP's methodology, including direct costs for materials, labor, vehicles, third-party services, and ad valorem taxes as well as indirect costs for supervision, engineering, and administrative expenses. Southern argues that there is no rational basis for treating its filing differently from that made by AEP.

U.S. Department of Energy-Western Area Power Administration, 99 FERC ¶ 61,055 n. 4 (2002) (disregarding the parties' styling of the pleading as motion for clarification and reconsideration and treating it as a request for rehearing).

[11] Southern cites *American Electric Power Service Corp.*, 99 FERC ¶ 61,312 at P 20 (2002); *American Electric Power Service Corp.*, Docket No. ER00-2232, Letter Order of May 18, 2000; and *American Electric Power Service Co.*, Docket No. ER04-1018, Letter Order of September 10, 2004, (collectively, the *AEP Orders*.)

19. Southern notes that the Investigation Order mentions the Tenaska complaints, but says that those complaints are not about the issue that is the subject of this section 206 investigation. Southern thus assumes that the question of the proper classification of the "interconnection" facilities for which the O&M charges are applicable is not an issue in this proceeding.

20. Southern asserts that the Investigation Order's suggestion that FPA section 307 allows the Commission to order retroactive refunds violates the refund provisions of section 206. The case cited in the order, *Entergy Services, Inc*., 104 FERC ¶ 61,061 (2003), does not mention section 307 and involved refunds in the context of a section 205 proceeding that had been set for hearing. Southern argues that the Investigation Order has expanded the scope of section 307, which "merely" authorizes the Commission to conduct investigations and perform basic functions associated with such investigations. Southern states that section 307 contains no mention of refunds and is silent on remedies. The Commission is prohibited from using section 307 to do indirectly what it is prohibited from doing directly.

21. Southern states that the Commission should hold that Southern Companies may continue assessing the O&M charges, as authorized by the Interconnection Agreements themselves.

B. Other Initial Comments

22. On April 15, 2005, Effingham County Power, LLC (Effingham) filed a motion to intervene and comments, noting that it is one of the generators from whom Southern is seeking to collect the O&M charges. Effingham states that the facilities on which Southern seeks to collect O&M costs are located at or beyond the point of interconnection with the Southern transmission system and thus are network facilities, not interconnection facilities. Effingham states that the Commission has previously ruled that it is unjust and unreasonable to directly assign to an interconnecting generator O&M costs on network facilities. Effingham requests that the Commission apply to it any ruling that the O&M charges Southern is collecting are unjust and unreasonable. The Commission should order Southern to stop imposing the O&M charges on Effingham and to refund with interest any charges that have been paid since January 1, 2005.

23. On April 19, 2005, Tenaska Georgia Partners. L.P., Tenaska Alabama Partners, L.P., and Tenaska Alabama II Partners, L.P. (collectively Tenaska) filed a motion for leave to intervene out-of-time and comments, stating that it had intervened in Docket No. ER05-129-000 and believed that another intervention in the current docket was not necessary. Tenaska states that Southern is making the same arguments that it made in the Informational Filing and that its concerns have not changed. Like Effingham; Tenaska argues that Southern is attempting to recover O&M charges on network upgrades, which is contrary to Commission policy. Tenaska states that even if collecting O&M charges

on network upgrades was permissible under Commission policy, Southern's proposal is improper because Southern already collects O&M charges on transmission facilities via its transmission rates and allowing collection of another O&M charge for the same facilities would result in double recovery.

24. On April 26, 2005, Calpine Corporation (Calpine) filed a motion for leave to intervene out-of-time on behalf of itself and its subsidiaries Mobile Energy, LLC and Calpine Construction Finance Company, L.P. Calpine requests waiver of the time limitation for filing motions to intervene in this proceeding, stating that it had intervened in Docket No. ER05-129-000 and believed that another intervention in this proceeding was unnecessary. Calpine states that granting its late intervention at this early stage of the proceeding will not cause disruption and it agrees to accept the current state of the record as of this date. Calpine does not make any substantive arguments.

25. On May 2, 2005, Southern filed an answer to the comments of Effingham and Tenaska.

C. Effingham's Response to Southern's April 15, 2005 Filing

26. On May 2, 2005, Effingham filed an answer to Southern's April 15, 2005 Response. Effingham states that Southern's assertion that section 5.4 of its Interconnection Agreement is specific enough to authorize Southern to collect the O&M charges is contrary to Commission precedent that requires all rates and charges to be clearly and specifically set forth in a rate schedule. Effingham argues that Southern must do more than broadly identify O&M charges in the Interconnection Agreement -- it must describe the charges in sufficient detail so that the Commission has enough information to determine whether those charges are just and reasonable. In addition, Effingham argues that the level of detail must be sufficient for the Commission to conclude that Southern's discretion in determining the amount of costs is adequately constrained. Effingham argues that the general statements in section 5.4 about O&M costs and billing methods do not meet these standards.

27. Effingham argues that Southern, by saying that the Effingham Interconnection Agreement is sufficient by itself to authorize the O&M charges, is contending that the Effingham Interconnection Agreement contains a formula rate for the O&M charges. Effingham states that section 5.4 of the Interconnection Agreement does not meet the specificity requirement for a formula rate.

28. Effingham states that Southern's Informational Filing does not give Southern the protection of the filed rate doctrine. Effingham states that if the Commission finds under section 206 that the O&M charges are unjust and unreasonable, then Southern cannot argue that the filed rate doctrine bars the Commission from refunding amounts wrongfully collected between January 1, 2005 and the refund effective date.

29. Effingham states that the Commission made the determination that the Informational Filing was not a filing under section 205 and Southern has not demonstrated that the Commission erred in that decision. Effingham notes that the Commission relied on Southern's own statements that it was not making the filing under section 205. While Southern argues that the Commission had the authority to treat the filing as a *de facto* section 205 filing, Effingham states that although the Commission has the *authority* to treat a wrongly-designated filing as a section 205 filing, this does not mean that the Commission has the *obligation* to help a public utility that incorrectly styles its filing.

30. Effingham states that even if the Commission erred when it rescinded the notice of the Informational Filing and failed to treat the filing as a section 205 filing, the filed rate doctrine would not protect Southern from refunds for amounts paid between January 1, 2005 and the refund effective date. Effingham argues that the Commission can order refunds from January 1, 2005 in order to correct any mistake in failing to take action on the Informational Filing before it took effect.

31. Effingham states that when the Commission determined that the Informational Filing was not a section 205 filing, that decision was either correct or a mistake. If correct, the Informational Filing is not a filed rate and Southern must refund amounts collected pursuant to a formula rate that was not filed under section 205. If a mistake, the filed rate doctrine does not bar the Commission from correcting the mistake by ordering Southern to refund unjust and unreasonable rates collected since January 1, 2005.

32. Effingham argues that under current Commission precedent, the O&M charges that Southern is imposing are unjust and unreasonable. According to Effingham, the facilities upon which Southern bases the O&M charges are located at or beyond the point of interconnection and are thus network facilities. Effingham states that section 12.3 of the Interconnection Agreement authorizes the Commission to modify the Interconnection Agreement under section 206 to eliminate unjust and unreasonable charges.

33. Effingham states that the Commission set for paper hearing and investigation all issues relevant to the justness and reasonableness of the O&M charges and did not exclude the question of whether the facilities are network facilities. Effingham argues that when the Commission sets for hearing the question of the justness and reasonableness of a rate, the scope of the hearing includes all issues relevant to the assessment of justness and reasonableness. Effingham notes that the Commission's reference to Tenaska's complaints in the Investigation Order cannot be interpreted as an express exclusion from this proceeding of the network facilities issue. Effingham states that the Commission gave no indication in the Investigation Order that any issues relevant to the justness and reasonableness of the O&M charges were outside the scope of

this proceeding and that as the network facilities issue was the most important issue raised by the generators in their protests, the Commission would have done so clearly had it intended.[12]

34. On May 10, 2005, Southern filed its opposition to Calpine's motion to intervene and reply to Effingham's answer.

IV. Discussion

A. Procedural Discussion

35. The Investigation Order directed Southern to make an initial filing on April 15, and allowed other interested parties until May 2, 2005 to respond to Southern's initial filing. Thus, the two sets of comments filed by Effingham, the comments filed by Tenaska, and the motion to intervene by Calpine are timely and accepted.[13] Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings.

36. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept either Southern's May 2, 2005 answer to Effingham's April 15, 2005 filing, or Southern's May 10, 2005 answer to Effingham's May 2, 2005 filing, and will, therefore, reject them.

B. Discussion

1. Is Southern Currently Collecting O&M Expenses from its Customers?

37. All parties agree that Southern began collecting O&M expenses on January 1, 2005.

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[12] Effingham states that it would have been inefficient and illogical for the Commission to exclude the network facilities issue from this proceeding as Southern has requested blanket authority to impose the O&M charges on all 18 Interconnection Agreements it had on file. The Commission would have the opportunity in this one proceeding to resolve the issue fully.

[13] Alternatively, we grant Calpine's motion to intervene and Tenaska's motion to intervene and comments on the basis that the parties have a substantial interest in this proceeding and that granting these motions will not result in undue prejudice to any party or delay the proceeding.

2. Are Southern's O&M Rates Properly on File with Commission?

38. Southern's labeling of its filing as an "Informational Filing" led to a great deal of confusion over the status of this filing. However, upon closer examination, the Commission is persuaded that the Informational Filing, in conjunction with the Interconnection Agreements, contained all the elements required by the Commission's Rules of Practice and Procedure for an abbreviated section 205 filing.[14] Therefore, we agree with Southern that its O&M rates are on file with the Commission and went into effect, by operation of law, on January 1, 2005.[15] In the future, however, the Commission will insist that filings be properly titled in accordance with our regulations. If they are not properly titled, *e.g.*, if a filing required under section 205 of the FPA is mislabeled by the applicant as an informational filing, then that filing will be rejected.

39. However, we reject Southern's arguments that the Interconnection Agreements, by themselves, contain rates that are sufficiently detailed to allow Southern to collect O&M charges without first making a section 205 filing. While the Interconnection Agreements reflect the parties' agreement that Southern will be able to charge some level of O&M costs, they are not specific enough to permit Southern to begin billing its customers without an additional filing to place a specific rate on file, *i.e.*, either a stated rate or a formula rate specifying the cost components to be recovered.[16] FPA sections 205(c) and 205(d) require public utilities to file all jurisdictional rates and charges in such time and such form as prescribed by the Commission, and to give notice before implementing a new rate or practice or modifying an existing rate or practice:

> Under such rules and regulations as the Commission may prescribe, every public utility shall file with the Commission, within such time and in such form as the Commission may designate . . . schedules *showing all rates and charges* for any transmission or sale subject to the jurisdiction of the Commission, and the classification, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services. . . . [N]o change shall be made by any public utility in any such rates, charges, classification, or service, or in any rule, regulation, or contract relating thereto, except after 60 days' notice to the Commission.[17]

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[14] *See, e.g.*, 18 C.F.R. §§ 35.12, 35.13 (2005).

[15] We will consider the Interconnection Agreements together with the rate schedule contained in Southern's Informational Filing as the rate currently on file.

[16] *See* 16 U.S.C. § 824d(c-d) (2000).

[17] 16 U.S.C. § 824d(c-d) (2000).

The Commission's regulations similarly require that a public utility, must "file with the Commission . . . full and complete rate schedules . . . clearly and specifically setting forth all rates and charges . . . ."[18] The Interconnection Agreements, by themselves, do not meet this standard.[19]

40. Southern itself argues that it is only in the Informational Filing that "the methodology used to determine O&M costs and calculate O&M charges" is set forth, and relies on its Informational Filing to establish "the reasonableness of the O&M methodology."[20] Southern also states that "[a] plain reading of the Commission's filing regulations suggests that, taken together, the Interconnection Agreements and the O&M Informational Filing constitute the 'filed rate'"[21] and that "each of the affected Interconnection Agreements along with the Informational Filing can be characterized as a complete 'rate schedule' that satisfies the requirements of section 35.1 and that is properly on file with the Commission."[22] We agree. Without the Informational Filing, the Commission had no way of knowing the level of the O&M charges, the methodology used to develop those charges, or the justness and the reasonableness of those charges. Thus it is both the Interconnection Agreements and the Informational Filing that constitute the filed rate.

3. Are the O&M Rates Being Charged by Southern Just and Reasonable?

41. As part of our investigation into Southern's O&M charges, we directed Southern to explain why its O&M methodology meets the Commission's just and reasonable standard. Having concluded that these rates are properly on file, we now look at whether they are just and reasonable.

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[18] 18 C.F.R. § 35.1(a) (2005). *See, generally* 18 C.F.R. §§ 2 and 385 (2005).

[19] *See, e.g.*, *Midwest Independent Transmission System Operator, Inc.*, 101 FERC ¶ 61,221 at P 64 (2002) (stating that "[t]he proposed rate sheets do not specify the actual calculations of the costs of these services. This lack of specificity in cost allocation among the schedules is contrary to Commission policy." Citations omitted.) *See also Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,235 at P 60 (2004).

[20] *See* Southern Response at 4-5. *See also* note 8 of Southern's Response, where Southern claims that it is only in the Informational Filing that the Commission is aware of the level and the breakdown of the charges that are being assessed.

[21] *Id.* at 21.

[22] *Id.* at 21-22 (emphasis in original).

42. Southern argues that the reasonableness of the O&M charges is demonstrated by the fact that the methodology it used to develop its O&M charges is based on a methodology approved by the Commission in the *AEP Orders*. Southern is correct that the methodology approved in the *AEP Orders* and the methodology it proposed in its Informational Filing are similar. However, there are some differences. Notably, the methodology the Commission approved in the *AEP Orders* linked the various cost components of its formula rate to comparable specific FERC accounts.[23] While Southern has listed some account numbers in its rate schedule and others in the affidavit submitted as part of the Informational Filing, it has not included all the relevant account numbers in the rate schedule itself.[24] We will therefore require Southern, in a compliance filing, to specifically link each cost component of the formula rate to a specific FERC account and include these account numbers in its rate schedule, similar to the methodology the Commission approved, and Southern relies upon, in the *AEP Orders*.

43. As noted above, Southern states that none of the protests filed in Docket No. ER05-129-000 raised concerns as to the reasonableness of the methodology used to derive the O&M charges. However, Calpine argued that Southern had not provided sufficient detail to determine whether some of the proposed O&M charges overlap with the costs already covered by the Administrative Charge found in the various Interconnection Agreements.[25] Tenaska made a similar argument.[26] Southern argues that such concerns about double recovery are unfounded, because the revenues recovered by Southern through the monthly Administration Charge are applied as a credit to the account associated with Power Coordination Center costs, offsetting the costs captured in that account.

44. We accept Southern's explanation. However, we also remind Calpine and Tenaska that they have the option of raising this issue again in a section 206 complaint if they find that such over-recovery is indeed occurring.

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[23] AEP notes that it does not book costs it incurs for O&M activities performed on behalf of owners on non-AEP-owned facilities to AEP's operating and maintenance accounts. However, to provide further clarity for its formula rate, it lists the comparable FERC Uniform System of Accounts that it would use to reflect such costs if they were incurred in connection with AEP' owned property. (*See e.g.*, AEP's compliance filing in ER02-1575-000, Appendix G).

[24] *See supra* note 18.

[25] Calpine Protest at 4-5.

[26] Tenaska Protest at 7-8.

45. Finally, the Commission wishes to make clear that it is not taking a position as to whether Southern is charging these O&M rates for the proper facilities. As mentioned above,[27] there are currently several complaints pending alleging that Southern is imposing its O&M charges on some facilities that should not be directly assigned interconnection facilities, that are instead network upgrades. The O&M methodology at issue here is found to be just and reasonable only insofar as it is properly applied to directly assigned interconnection facilities.

4. What is the Appropriate Remedy if Southern is Collecting O&M Charges Contrary to the FPA?

46. As Southern is not collecting O&M charges contrary to the FPA, there is no need to address the arguments made in response to this question.

The Commission orders:

(A) The investigation of Southern's O&M charges under the Investigation Order in Docket Nos. EL05-53-000 and ER05-129-000 is hereby concluded.

(B) Southern is directed to revise its O&M rate charge schedule to clarify as directed above.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

(S E A L)

Linda Mitry,
Deputy Secretary.

[27] *See supra* note 3.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southern Company Services, Inc. Docket Nos. EL05-53-000 and ER05-129-000

(Issued July 28, 2005)

KELLY, Commissioner, *dissenting in part*:

I dissent from the finding in today's order that Southern Company Services, Inc. (Southern)'s Informational Filing constitutes a specific rate on file pursuant to section 205 of the Federal Power Act (FPA).

Sections 205 (c) and (d) of the FPA require public utilities to file all jurisdictional rates and charges in such time and in such form as prescribed by the Commission, and to give notice before implementing a new rate or practice or modifying an existing rate or practice:

> Under such rules and regulations as the Commission may prescribe, every public utility shall file with the Commission, within such time and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classification, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services. . . . [N]o change shall be made by any public utility in any such rates, charges, classification, or service, or in any rule, regulation, or contract relating thereto, except after sixty days' notice to the Commission and to the public.

Similarly, the Commission's regulations require that Southern, or any other public utility, must "file with the Commission . . . full and complete rate schedules . . . clearly and specifically setting forth all rates and charges . . . ."[1]

Today's order concludes that the Southern Interconnection Agreements, by themselves, do not contain rates that are sufficiently detailed to allow Southern to collect O&M charges and finds that Southern was required to make an additional filing to place a specific O&M rate on file. I agree. However, I disagree with the order's finding that Southern's "Informational Filing Regarding Recovery of O&M Charges under

[1] 18 C.F.R. § 35.1(a) (2004).

Interconnection Agreements" is sufficient to constitute a rate filing pursuant to FPA section 205.

First, Southern's pleading did not indicate that it was a rate filing made pursuant to the statute and it was not labeled as such. Other parties seem to have little difficulty accurately labeling such rate filings as either a "petition for acceptance of rate schedule" or a "revision to open access transmission tariff." No regulated entity, including Southern, should be allowed to benefit from filing vague or mislabeled pleadings with the Commission. Moreover, even Southern itself indicates that it did not intend its filing to be a rate filing. Southern explained "[s]ince this filing involves the recovery of costs that are specifically identified in Commission-approved agreements, it appears questionable whether this filing is required because it is neither the filing of an initial rate schedule nor a change in rate schedule for purposes of 18 C.F.R. §§ 35.12, 35.13."[2]

Today's order states that "[i]n the future" the Commission will reject pleadings that are not properly titled in accordance with our regulations. Given the sheer volume of filings made here at the Commission, it is entirely reasonable to require parties—particularly sophisticated FERC practitioners—to accurately label their pleadings. I believe that this rationale should be applied equally to Southern in the instant proceeding. For this reason, I respectfully dissent from this aspect of today's order.

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Suedeen G. Kelly

[2] Southern's November 1, 2004 "Informational Filing Regarding Recovery of O&M Charges under Interconnection Agreements" at n. 1.